IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3195 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAKESHBHAI CHANDULAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MAHENDRA K PATEL for Petitioners

MR KG SHETH, APP, for Respondent No. 1

Respondent No.2 present-in-person

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/08/2000

ORAL JUDGEMENT

1. The petitioners have filed this petition under section 482 of the Code of Criminal Procedure, 1973 for quashing and setting aside the F.I.R. being Crime Register No.132 of 1997 registered with Kalol Taluka

Police Station filed by the second respondent as well as the Criminal Case No.2519 of 1997 pending before the learned Judicial Magistrate First Class at Kalol.

2. It appears that, as per the case of the second respondent, the petitioners had issued a cheque and it was dishonoured on 30th May, 1997. Therefore, the second respondent issued a notice to the petitioners on 3-7-1997 and thereafter on 19-7-1997 a complaint was filed before the Police Station which was registered as Crime Register No.132 of 1997 before the Kalol Taluka Police Station in Mahesana District. The police investigated the case and thereafter chargesheet was filed against the petitioners as well as Vijaykumar Chandulal Patel on 18-10-1997 for offence punishable under section 138 of the Negotiable Instruments Act (to be hereinafter referred to as `the said Act').

3. The petitioners have challenged the aforesaid F.I.R. as well as the aforesaid case which was registered before the said Court at the aforesaid number. The aforesaid F.I.R. and criminal case have been assailed on several grounds. Rule was issued at the first instance. The second respondent is present in person. The State is being represented by the learned Additional Public Prosecutor Mr. K.G. Sheth.

4. I have heard the learned advocates for the parties and the respondent No.2 in person who is present in person and have perused the papers.

5. The facts are not very much in dispute. The cheque was issued by the petitioners and it was dishonoured on 30th May, 1997. Thereafter, notice was issued by the second respondent to the petitioners on 3rd July, 1997. One of the requirements and ingredients of the offence is that the cheque must have been presented before the Bank within a period of six months and then the cheque must have been dishonoured and thereafter the demand for payment of the said amount of the cheque by giving a notice in writing is required to be made within 15 days of the receipt of information from the Bank. In other words, as soon as the cheque is dishonoured, a notice is required to be issued within 15 days of receipt of the information. This can be gathered from clause (b) to proviso to section 138 of the said Act. In the present case, the statutory requirement has not been complied with as it is apparent from the record that the cheque was dishonoured on 30th May, 1997 and the notice was issued on 3rd July, 1997. Thus, there was a gap of more than a month between the two and therefore, notice

was not issued within time provided in the said provision of law. Therefore, the notice cannot be said to be strictly in accordance with law.

6. Another aspect of the case is that under section 142 of the said Act, provision has been made for taking cognizance of the offence. Clause (a) is relevant clause for the purpose of deciding the present petition and it can be reproduced for ready reference as follows:

142. Cognizance of offences - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

7. The aforesaid provision makes it clear that the Magistrate can take cognizance of the offence on the basis of a complaint in writing made by the payee or as the case may be, the holder in due course of the cheque. This means that the payee or the holder in due course must file a complaint before the Magistrate and the Magistrate can take cognizance of the offence only on the strength of such a complaint. In the present case, there was no complaint before the learned Judicial Magistrate First Class as contemplated by section 142 of the said Act. However, the learned Judicial Magistrate First Class has taken cognizance on the strength of the chargesheet presented to him by the police investigating Officer by investigating the offence on the strength of the F.I.R. filed before the Police Station. This is totally impermissible in view of the wordings of section 142(a) of the said Act. In that view of the matter, it has become clear that the learned J.M.F.C. had no jurisdiction to entertain the matter on the strength of the chargesheet and he had no jurisdiction to take the cognizance of the offence of the said chargesheet.

8. Therefore, on one hand, the notice has not been issued within the prescribed time of 15 days and on the other, the cognizance has not been taken on the strength of the complaint but it has been taken on the strength of the chargesheet which is not permissible in view of the provision contained in section 142 (a) of the said Act.

9. At the same time, it has also come out on record that the amount in question has been paid up in full by

the petitioners and the second respondent present in the Court also states that the amount of cheque has been subsequently paid up by the petitioners. Therefore, even the said dues are also not outstanding.

10. In the aforesaid view of the matter, learned J.M.F.C. cannot be permitted to proceed ahead with the trial against the petitioners on the strength of the said chargesheet. In that view of the matter, F.I.R. as well as the criminal case both are required to be quashed and set aside as there exists a legal ground for doing so and with a view to advance substantial justice to the parties and preventing the abuse of the process of the Court.

11. In the aforesaid view of the matter, the present petition is allowed. The F.I.R. being F.I.R. in Kalol Taluka Police Station, Crime Register No.132 of 1997 dated 19th July, 1997 and the Criminal Case No.2519 of 1997 are both quashed and set aside and the learned Judicial Magistrate First Class at Kalol in Mahesana District is prevented from prosecuting the petitioners on the strength of the said chargesheet filed before him. Rule is made absolute to the aforesaid extent.

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